

IN THE HIGH COURT OF JUSTICE
OF EDO STATE OF NIGERIA
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON. JUSTICE P.A. AKHIHIERO,
ON MONDAY THE
12TH DAY OF OCTOBER, 2026.

SUIT NO. B/324M/2025

IN THE MATTER OF AN APPLICATION BY DR. ALBERT USUANLELE FOR
AN ORDER FOR THE ENFORCEMENT OF HIS FUNDAMENTAL RIGHTS

BETWEEN:

DR. ALBERT USUANLELE APPLICANT
AND

1. MR. ALEXANDER IKPONMWOSA USUANLELE (JNR)

2. ISOKEN IGHILE

3. SALMAN DOGO GARBARESPONDENTS
(ASSISTANT INSPECTOR GENERAL
OF POLICE, AIG ZONE 5)

4. DSP AFERUAN
(ANTI-MONEY LAUNDERING UNIT, AIG ZONE 5)

5. NIGERIA POLICE FORCE [NPF]

JUDGMENT

This is a Judgment in respect of an application for the enforcement of Fundamental Rights brought pursuant to *Sections 34, 35(1) and 46(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Order II Rules 1, 2, 3, 4 and 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009, Articles 5 and 6 of the African Charter on Human and Peoples' Rights* and under the inherent jurisdiction of this Honourable Court.

In this application, the Applicant is seeking the following reliefs:

1) A DECLARATION that the constant harassment, arrest, dehumanization, police invitation and evasion of the applicant house regularly, without any probable or lawful cause, is unjustified and a

violation of the Applicant's right to dignity of his person, personal liberty and freedom of movement guaranteed by Section 34, 35(1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) as well as Article 6 of the African Charter of Human and People's Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation of Nigeria, 2004 on a subject matter pending in suit No. ORACC/60R/2025 between the Applicant family and the 1st-2nd Respondents.

2) AN ORDER of this Honourable Court restraining the Respondents particularly the 3rd-5th Respondents from intimidating, harassing, embarrassing, taking any further steps by detaining the applicant or by any restriction infringe on the applicant's right to life and liberty on any of the issues arising from the subject matter pending in suit No. ORACC/60R/2025 between the Applicant family and the 1st-2nd Respondents.

3) AN ORDER Restraining the Respondents from further harassing, arresting, intimidating or inviting the applicant for any interview in respect of the petition written by the 1st Respondent or his privies as it relates to any of the issues arising from the subject matter pending in suit No. ORACC/60R/2025 between the Applicant family and the 1st-2nd Respondents.

4) AN ORDER of this Honourable Court directing the Respondents to pay the sum of N2,000,000.00 (Two Million Naira) only each to the Applicant as punitive and exemplary damages for the forceful arrest and detention of the Applicant and denying the Applicant right to liberty and freedom of movement and to refrain from entertaining matter arising from the subject matter pending in suit No. ORACC/60R/2025 between the 1st-2nd Respondents and the Applicant family.

5) And for such further order(s) as this Honourable Court may deem fit to make in the circumstances.

The application is supported by a statement setting out the name and description of the Applicant, the reliefs sought and the grounds upon which they are sought, an affidavit of 34 paragraphs deposed to by the Applicant, and the written address of the learned counsel for the Applicant. The originating motion is dated the 24th day of November, 2025.

From the facts deposed to in the supporting affidavit, the Applicant's case is that he is the younger brother of late Chief Alexander Omoruyi Usuanlele who died on the 7th day of December, 2024 and whose body is still lying in the mortuary. He averred

that the 1st Respondent is the surviving senior son of the late Chief and the person who wrote the petition to the 3rd to 5th Respondents which led to his arrest and detention, while the 2nd Respondent is the mother of the 1st Respondent, who, according to him, was divorced by the late Chief before he died, and who is instigating and financing the 3rd to 5th Respondents to harass and intimidate him.

The Applicant alleged that upon the death of his brother, he was instructed by the head of the family to deposit the body in the mortuary and to summon a meeting of the family with the children of the deceased, which he did, and that he created a WhatsApp group for the children and members of the family. He said that a dispute arose when the 1st Respondent began to assert that he was the only child of the late Chief, and that the 1st and 2nd Respondents boasted that they would bury the deceased without the family and the other children. He averred that under Benin native law and custom, it is the children and the family of a deceased person, and not a divorced wife, that carry out the burial ceremony. He said that the 1st and 2nd Respondents nevertheless printed burial invitation cards, a copy of which is attached to the supporting affidavit as Exhibit A.

According to the Applicant, the 1st and 2nd Respondents influenced the 3rd to 5th Respondents and caused the general head of the family, Pa. Imuetiyan Osarumwense, a man of about 94 years, to be arrested and charged to court for the criminal allegation of not allowing the 1st and 2nd Respondents to bury the late Chief alone. The charge sheet is attached as Exhibit B.

He averred that the matter was taken to the palace of the Oba of Benin where the palace chiefs ordered the 1st and 2nd Respondents to apologise to the head of the family, to withdraw the criminal charge against him, to cover up the grave they had dug, and to agree with the other children on a date for a joint burial, but that the 1st and 2nd Respondents ignored the directive.

The Applicant stated that his family was left with no choice but to approach the Area Customary Court against the 1st and 2nd Respondents and others in Suit No. ORACC/60R/2025, for a determination of how the late Chief, a high-ranking Benin chief who died intestate, should be buried and all other issues arising therefrom, including whether any of the children can inherit the properties of the deceased without first participating in his burial. The claim and the Defence/Counter-claim in that suit are attached as Exhibits C and C1. He said that the 1st and 2nd Respondents have entered appearance and filed their Defence/Counter-claim in that suit.

The Applicant alleged that the 1st and 2nd Respondents have since then been using the office of the 3rd to 5th Respondents to harass and intimidate him and his family. In paragraphs 21 to 24 of the supporting affidavit he averred that about three months

before he deposed to the affidavit, he was arrested inside the court premises by the 3rd to 5th Respondents when he came to court in Suit No. ORACC/60R/2025; that the petition upon which he was arrested was written on behalf of the 1st Respondent by one ***Pius Oiwoh Esq.***; that a few days before the affidavit, officers led by the 3rd Respondent invaded his business premises to arrest him upon another petition written by the 1st Respondent through the same counsel, a copy of which is attached as Exhibit D, and, not finding him, left an invitation letter; and that when he honoured the invitation on the 4th day of November, 2025, his movement was restrained throughout that day and he was dehumanised by the men of the 3rd to 5th Respondents.

He further averred that despite his health challenges, the 3rd to 5th Respondents keep harassing and intimidating him with several letters of invitation on the same subject matter pending in court; that the 1st and 2nd Respondents have boasted that they will use the office of the 3rd to 5th Respondents to charge him to court as they did to the head of the family; and that the actions of the Respondents have affected his health, for which his medical report is attached as Exhibit E. His reply to the invitation letter of the police is Exhibit F. He denied receiving money from the 1st Respondent for medical bills or mortuary fees and said that the only money he received from the 1st Respondent, on the 17th day of December, 2024, was for the maintenance of the late Chief's apartment, as shown in his bank statement, Exhibit G. He denied taking any property belonging to the late Chief. He alleged that the 1st and 2nd Respondents are threatening him to withdraw Suit No. ORACC/60R/2025 as the only condition for them to stop using the 3rd to 5th Respondents to detain him and charge him to court, and that the actions of the Respondents have caused him public disgrace as a result of the frequent invasion of his house and business premises by the 3rd to 5th Respondents.

In opposition to this application, the 3rd to 5th Respondents filed a joint Counter-Affidavit deposed to by one Inspector Omo Oloyede, a police officer attached to the Legal Section of the Zone 5 Police Headquarters, Benin City. In it, they stated that paragraphs 1, 2, 3, 5 to 11 and 14 to 19 of the supporting affidavit are matters within the personal knowledge of the Applicant which they are not in a position to deny, and they denied paragraphs 4, 12, 13 and 20 to 34 thereof. They maintained that on the 29th day of October, 2025, the office of the 3rd Respondent received a petition dated the 16th day of October, 2025, written by the law firm of Oiwoh Law Chambers, which is attached as Exhibit AA1. The petition alleged obtaining by false pretence, stealing and malicious damage against the Applicant and was referred to the 4th Respondent and his team for investigation.

The deponent stated that the Applicant was invited to respond to the allegations and that on the 4th day of November, 2025, he honoured the invitation, was shown the petition, volunteered a statement and was immediately granted bail without any formal detention. His statement and bail bond are attached as Exhibits AA2 and AA3 respectively. She said that investigation was still ongoing when the Applicant filed this application, that the Applicant was at no time threatened, harassed or intimidated, that investigation had not been concluded, and that the Applicant is aware that he may be arraigned if a prima facie case is established against him. She maintained that the 3rd to 5th Respondents acted within their constitutional powers and duties and did not infringe the rights of the Applicant.

Also in opposition to the application, the 1st Respondent deposed to a Counter-Affidavit of 34 paragraphs on behalf of himself and the 2nd Respondent, his mother. The Counter-Affidavit was filed out of time and was deemed properly filed and served by an order of this Court upon the motion of the 1st and 2nd Respondents for extension of time.

In a nutshell, the 1st Respondent's story is that he is the only surviving son and child of the late Chief; that the 2nd Respondent was the lawfully married wife of the late Chief and only became aware of the alleged dissolution of the marriage, which was by an undefended petition, in February, 2026; and that, on being told by one Sunny Usuanlele that under Bini native law and custom he was the proper person to fix the date for the burial of his father, he fixed the 2nd day of January, 2025 and later the 23rd day of January, 2025, which, according to him, the Applicant and Sunny Usuanlele agreed to.

He averred that he travelled to Nigeria with the 2nd Respondent on the 2nd day of January, 2025, and that, after a visit to the Okaiegbe of the family in the company of the Applicant, the Applicant for the first time objected to the date. He alleged that the Applicant received money from him to settle the hospital bills of his late father and for the deposit of the corpse at the Stella Obasanjo Women and Children Hospital, and that the Applicant took the mortuary access card on his behalf but has refused to hand it over to him despite repeated demands. He said that he first filed Suit No. MEV/01/2025 in the Magistrate Court to recover the access card, which was later withdrawn upon family intervention.

In paragraph 27 of his Counter-Affidavit, the 1st Respondent stated that he lodged a complaint with the office of the 3rd Respondent concerning the conduct of the Applicant, including the raiding of the house at No. 38, 2nd Ogbewase Street, off Ekehuan Road, Benin City, in which several artworks, car keys and property documents were removed, which, according to him, amounted to stealing. He said

that upon invitation and interview of the parties by an Assistant Director of the Human Rights Department of the office of the 3rd Respondent, the Applicant was advised to hand over the access card and promised to do so at a meeting in the chambers of his counsel, but reneged on the promise and walked out of the meeting. He said that on the 22nd day of January, 2025, counsel for the Applicant filed Suit No. ORACC/60R/2025, thereby frustrating the burial fixed for the 23rd day of January, 2025.

The 1st Respondent denied harassing or threatening the Applicant to withdraw the customary court suit. He maintained that the Applicant was being tried at the Magistrate Court in Suit No. MOR/637C/2025 for the offences of stealing and conversion of money given to him in preparation for the burial. In paragraph 32 of his Counter-Affidavit, he denied that the Applicant was arrested within the court premises. He stated that the arrest was effected outside the court premises along Forestry Road; that after his statement was taken, the Applicant was granted bail but failed to appear on the date given to him and ignored calls to him and his surety, so the police had to lay siege for him; and that he was again granted bail and later charged to court.

Upon being served with the Counter-Affidavits of the Respondents, the Applicant filed two Further Affidavits. The first, dated and filed on the 21st day of May, 2026, is an affidavit of 18 paragraphs in reaction to the Counter-Affidavit of the 1st and 2nd Respondents. The second, sworn on the 13th day of July, 2026, is an affidavit of 19 paragraphs in reaction to the Counter-Affidavit of the 3rd to 5th Respondents. Both were filed out of time and were deemed properly filed and served by orders of this Court made on the 22nd day of May, 2026 and the 14th day of July, 2026 respectively, without objection from the Respondents.

In the Further Affidavits, the Applicant averred that the 1st Respondent is not the only child of the late Chief, having himself deposed in Suit No. MEV/01/2025 that the late Chief had three surviving children, as shown in Exhibit D1. He said that despite the pendency of Suit No. ORACC/60R/2025, the 1st Respondent wrote a petition to the police against him on the same subject matter, which is attached as Exhibit D2. He averred that he was arrested in a "commando style" inside the premises of the Oredo Customary Court on the 18th day of December, 2025, after giving evidence in Suit No. ORACC/60R/2025, in the presence of many persons who held him in high esteem, and at a time when the 3rd to 5th Respondents had already been served with the processes in this suit. He said that without any further investigation and in order to avoid an interview fixed by the 3rd Respondent for the 19th day of December, 2025, the 3rd to 5th Respondents hurriedly charged him to the

Magistrate Court on the 19th day of December, 2025. The charge sheet is attached as Exhibit D3 and Exhibit ALBERT 1.

The Applicant averred that the charge was predicated on purported stolen items which form part of the estate of the late Chief and which is the subject matter of the suit pending before the Area Customary Court. He denied that he ever jumped bail and said that on the date he was asked to report, he instructed his solicitor to write to the 3rd Respondent to reschedule the date on account of his health, and the letter is attached as Exhibit D4. He said that he was the only relation who lived with and took care of the late Chief in Nigeria and has no reason to steal from him. Finally, in paragraph 18 of the Further Affidavit of the 13th day of July, 2026, he averred that the charge against him, which was filed after he had served the 3rd to 5th Respondents with the processes in this suit, has been determined and dismissed by the Magistrate Court upon a no-case submission, and the ruling is attached as Exhibit ALBERT 2.

All the learned counsel for the parties filed their written addresses which they adopted as their arguments in support of their respective cases at the hearing of the application on the 14th day of July, 2026.

In his written address, the learned counsel for the Applicant, *O.F. Emwanarue Esq.*, formulated a sole issue for determination as follows:

"Whether by the facts presented before this Honourable Court the Applicant herein is entitled to the reliefs sought in this application."

Arguing the sole issue for determination, learned counsel submitted that personal liberty, freedom of movement and the dignity of the human person are rights guaranteed by ***Sections 34, 35(1) and 46(1) of the 1999 Constitution (as amended)***, which he reproduced. He submitted that the Applicant has been arrested and detained by the Respondents on several occasions on a subject matter pending in court between the Applicant's family and the 1st and 2nd Respondents. He submitted that a trial court has a duty to ensure respect for and observance of human rights and should refuse any interpretation which seeks to temper with fundamental rights. He relied on the cases of ***Patriotic Party v. I.G.P. Accra (2000) 2 HRLRA 27; Ushae v. C.O.P. (2005) 11 NWLR (Pt. 937) 505; and Agbakoba v. Director, S.S.S. (1998) 1 HRLRA 256.***

Learned counsel further submitted that once a right is shown to have been breached, the Applicant is entitled to compensation and public apology, and he relied on the case of: ***Odogu v. A.G. Federation; Fawehinmi v. Babangida (2000) HRLRA 144; and Ekpu v. A.G. Federation (1998) 1 HRLRA 391.*** He submitted that the law

presumes that damages flow naturally from the injury suffered by an applicant in fundamental rights proceedings, citing the case of *Abiola v. Abacha*. He listed the factors to be considered in the award of damages for the infringement of fundamental rights, namely the frequency of the type of violation in recent times, the continually depreciating value of the naira, the motivation for the violation, the status of the Applicant, the undeserved embarrassment meted out to the Applicant including pecuniary loss, and the conduct of the parties generally, and he commended to the Court the cases of *Ajayi v. A.G. Federation (1998) 1 HRLRA 373 and Onagoruwa v. I.G.P.* Finally, he submitted that the conduct of the Respondents is reprehensible and deserving of exemplary damages to serve as a deterrent to other law enforcement agents, relying on the case of *Ezeaka v. Nwankwo (2000) 2 HRLRA 165 and Odogu v. A.G. Federation*. He urged the Court to grant all the reliefs sought with substantial costs against the Respondents.

In the written address of the 1st and 2nd Respondents, settled by *P.I. Oiwoh Esq.* and *C.E. Esomonu Esq.*, learned counsel submitted that the application is misconceived, an abuse of court process and intended to shield the Applicant from criminal liability for collecting money from the 1st Respondent for the treatment and burial of the deceased, failing to account for it, and stealing properties within the premises of the deceased. He formulated a sole issue for determination as follows:

"Whether in view of the facts before this Honourable Court, the Applicant has established any infringement of his fundamental rights by the Respondents to warrant the grant of the reliefs sought."

Arguing the sole issue, learned counsel submitted that an applicant in fundamental rights proceedings must establish a clear breach of his constitutional rights, relying on the cases of *Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517* and *Director, S.S.S. v. Agbakoba (1999) 3 NWLR (Pt. 595) 314*. He submitted that on the day the Applicant was arrested, he spent a few hours and was granted bail, and that when he jumped bail and was rearrested, he was again granted bail and charged to court the following day. He submitted that every citizen has a right to report a suspected crime to the police and that petitioning the police does not amount to harassment or an infringement of fundamental rights, citing the cases of *Onah v. Okenwa (2010) 7 NWLR (Pt. 1194) 512* and *Abdullahi v. Commissioner of Police (2018) LPELR-45107(CA)*.

Learned counsel further submitted that the procedure for the enforcement of fundamental rights cannot be used to stop a criminal investigation, relying on the cases of *Fawehinmi v. I.G.P. (2002) 7 NWLR (Pt. 767) 606* and *A.G. Anambra*

State v. Uba (2005) 15 NWLR (Pt. 947) 44. He submitted that the Applicant was not detained on the day his statement was taken; that the Applicant did not allege any act of torture, inhuman or degrading treatment, citing the case of *Uzoukwu v. Ezeonu II (1991) 6 NWLR (Pt. 200) 708*; and that he has not subjected to any restriction of his movement such as a travel restriction, seizure of his passport or unlawful confinement. He relied on the decision of the Court of Appeal in the case of *Universal Investment & Development & Anor v. Itoroh & Ors (2021) LPELR-54854(CA)*, where the court, following the case of *Ihua-Madueyi v. Robinson (2019) LPELR-47252(CA)* and *Kalio & Anor v. Dawari & Ors (2018) LPELR-44628(CA)*, held that a mere invitation by the police for the purpose of investigating an allegation of crime cannot constitute a breach or threat to the fundamental rights of a citizen.

Learned counsel also submitted that the application is an abuse of court process because it was instituted while a criminal proceeding on the same facts was pending before a Magistrate Court, citing the case of *Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156*; that the Applicant does not have clean hands; and that fundamental rights proceedings should not be used to shield criminal acts, citing the case of *Ezeadukwa v. Maduka (1997) 8 NWLR (Pt. 518) 635*. He urged the Court to dismiss the application with substantial costs.

In his written address in support of the joint Counter-Affidavit of the 3rd to 5th Respondents, the learned counsel, *Y. Musa Esq.*, a Legal Officer at the Zone 5 Police Headquarters, Benin City, formulated four issues for determination as follows:

(1) Whether the applicant's fundamental rights to personal liberty, freedom of movement, dignity of human person, arbitrary arrest, detention, fair hearing as guaranteed by section 34, 35, 36, 37 and 46(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and Articles 3, 5 and 12(10) of the African Charter on Human and People's Rights (Ratification and Enforcement Act Cap 10) Laws of the Federation of Nigeria 1990 has been breached or violated by the Respondents as alleged.

(2) Whether any person(s) accused of a felony can hide under fundamental right.

(3) Whether or not Police can investigate the allegation of crime against the applicant.

(4) Whether the applicant is entitled to the reliefs sought.

Thereafter, the learned counsel argued the four issues seriatim.

ISSUE 1:

Learned counsel submitted that the invitation of the Applicant to answer questions in respect of a petition alleging obtaining by false pretence, stealing and malicious damage was not unlawful. He submitted that by ***Section 4 of the Police Act and Sections 18, 50 and 51 of the Administration of Criminal Justice Act, 2015***, the police may arrest without a warrant any person reasonably suspected of having committed an offence; that by ***Section 35(1)(c) of the Constitution***, the right to personal liberty may be curtailed upon reasonable suspicion of the commission of a criminal offence; and that no right is absolute. He relied on the cases of ***Ekwenugo v. F.R.N. (2001) NWLR (Pt. 708) 171***; ***Fawehinmi v. I.G.P. (2002) 98 LRCN 1165***; and ***Fajemirokun v. C.B. (C.L.) Nig. Ltd. (2002) 10 NWLR (Pt. 774) 95***.

He urged the Court to believe the account of the 3rd to 5th Respondents and to disbelieve that of the Applicant.

ISSUE 2:

On this issue, learned counsel submitted that fundamental rights are not a canopy under which a person reasonably suspected of having committed an offence can hide and he relied on the case of ***Dokubo-Asari v. F.R.N. (2007) 152 LRCN 116***.

ISSUE 3:

Learned counsel submitted that the police are under an obligation to receive complaints and investigate allegations of crime by virtue of ***Section 4 of the Police Act and Sections 50 and 51 of the Administration of Criminal Justice Act, 2015***. Again, he relied on the case of ***Fawehinmi v. Akilu & Togun (1987) 4 NWLR 797***, where the Supreme Court held that a citizen has a right to see that crime is not committed and, if committed, to lay a criminal charge against the offender; he also cited the case of ***A.G. Anambra State v. Uba (2005) 33 WRN 191***, on the proposition that a person cannot go to court to be shielded against criminal investigation and prosecution; and the case of ***Fawehinmi v. I.G.P. (2002) 7 NWLR (Pt. 767) 606 at 670***, on the duties of the police under ***Section 4 of the Police Act***.

ISSUE 4:

Finally, learned counsel submitted that unless the Applicant is arrested and detained beyond the constitutionally allowed period without being charged to court, the action of the 3rd to 5th Respondents cannot be said to be unlawful, and he referred to ***Section 35(6) and (7)(a) of the Constitution***. He submitted that the Applicant was merely

invited and is being investigated over a serious crime based on a petition, and that this cannot infringe his fundamental rights. He urged the Court to dismiss the application with substantial costs.

At the hearing of the application, the learned counsel for the 1st and 2nd Respondents, **P.I. Oiwoh Esq.**, objected to the Further Affidavit of the Applicant dated the 21st day of May, 2026 on the ground that it offends ***Order II Rule 7 of the Fundamental Rights (Enforcement Procedure) Rules 2009***, because the Applicant filed it without a reply on points of law. He urged the Court to strike it out. The learned counsel for the Applicant urged the Court to allow the Further Affidavit.

It is also pertinent to observe that at the same hearing, the learned counsel for the 1st and 2nd Respondents applied to withdraw their motion on notice dated and filed on the 17th day of June, 2026, and the motion was accordingly struck out. A copy of a Further Affidavit/Reply to the Applicant's Further Affidavit deposed to by the 1st Respondent, together with a Reply on Points of Law, is in the Court's file. The only Further Affidavit and Reply on Points of Law of the 1st and 2nd Respondents seen in the processes supplied were exhibited as Exhibit "A" to a motion for extension of time to file them; the record shows that the motion of 17/6/2026 was withdrawn and struck out on 14/7/2026, and learned counsel relied only on the Counter-Affidavit and written address. Since the motion by which the 1st and 2nd Respondents sought leave to bring in those processes was withdrawn and struck out, the processes were never regularised and are not properly before the Court. They are accordingly discountenanced.

THE OBJECTION TO THE APPLICANT'S FURTHER AFFIDAVIT

I will first resolve the objection raised by the learned counsel for the 1st and 2nd Respondents on the objection to the Applicant's Further Affidavit. ***Order II Rule 7 of the Fundamental Rights (Enforcement Procedure) Rules 2009*** provides that the Applicant may, on being served with the Respondent's written address, file and serve an address on points of law within five days of being served and may accompany it with a further affidavit.

The Rule is permissive. It permits an Applicant to file a reply on points of law and to accompany it with a further affidavit; it does not say that a further affidavit filed without a reply on points of law is a nullity. More importantly, on the 22nd day of May, 2026, the Applicant moved a motion for extension of time to file the said Further Affidavit and for an order deeming it as properly filed and served. The learned counsel who appeared for the 1st and 2nd Respondents on that day said that he had no objection, and the Court granted the application and deemed the Further Affidavit as properly filed and served. The 1st and 2nd Respondents cannot, after

acquiescing in that order, turn round at the hearing to challenge the competence of the same process. In any event, by ***Order IX Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009***, a failure to comply with the requirements of the Rules as to time, place, manner or form is to be treated as an irregularity and may not nullify the proceedings, save in respect of the mode of commencement of the application and the subject matter. The objection is therefore overruled, and the Further Affidavit dated the 21st day of May, 2026 shall be considered along with the other processes.

THE CONTENTION THAT THE APPLICATION IS AN ABUSE OF COURT PROCESS

The learned counsel for the 1st and 2nd Respondents also contended that this application is an abuse of court process because it was instituted while a criminal proceeding on the same facts was pending before the Magistrate Court. With respect, I do not agree. This application was filed on the 24th day of November, 2025, before the Applicant was charged to court on the 19th day of December, 2025. The application could not therefore have been brought to frustrate a criminal proceeding which was not then in existence. Besides, the two proceedings are not between the same parties and do not raise the same issues: the one is a criminal charge preferred by the State, while the other is a complaint by a citizen that his constitutionally guaranteed rights have been infringed. The contention is therefore discountenanced.

THE MERITS OF THE APPLICATION

I have carefully examined all the processes filed in this application together with the submissions of the learned counsel for the parties. The issues formulated by all the counsel are quite germane to the just determination of this application.

However, I have condensed the issues into a sole issue for determination as follows:
Whether the Applicant is entitled to the Reliefs claimed in this Application for the alleged breach of his fundamental rights.

Fundamental rights are enshrined in ***Sections 33–46 in Chapter IV of the 1999 Nigerian Constitution, as amended. Section 46 of the Constitution***, as amended empowers every citizen whose fundamental right has been or is being, breached, to approach the Court to seek redress, see the following cases: ***Sea Trucks (Nig.) Ltd. v. Anigboro (2001) 2 NWLR (Pt. 695) 159; Fajemirokun v. C.B. Nig. Ltd. (2009) 5 NWLR (Pt. 1135) 558; W.A.E.C. v. Adeyanju (2008) 9 NWLR (Pt. 1092) 270; Tukur v. Government of Gongola State (1989) 4 NWLR (Pt. 117) 517; Jack v. UNAM (2004) 5 NWLR (Pt. 865) 278; and Gafar v. Government of Kwara State (2007) 4 NWLR (Pt. 1024) 375.***

The burden of proof of the breach of fundamental right of a citizen resides in an applicant, see the cases of *Fajemirokun v. C.B. Nig. Ltd. (2009) 5 NWLR (Pt. 1135) 558*; and *Jim-Jaja v. C.O.P., Rivers (2013) 6 NWLR (Pt. 1350) 225*. The standard of proof is on the balance of probability or preponderance of evidence, see the case of *Arowolo v. Olowokere (2012) All FWLR (Pt. 606) 398*.

Before going further, I must observe that although the Applicant's statement in support of the application contains a ground that he was detained in custody for over eight hours, this averment is not contained in any of the Applicant's affidavits. The grounds set out in the statement are not evidence. The Court can only act on the facts deposed to in the affidavits and the exhibits attached to them.

Essentially, the gravamen of the Applicant's complaint is that the 1st and 2nd Respondents, who are his adversaries in a pending customary court suit over the burial and the estate of his late brother, have been using the 3rd to 5th Respondents to harass, intimidate, arrest and detain him on the same subject matter in order to force his family to withdraw that suit. The particular incidents deposed to by the Applicant are: an arrest inside the court premises about three months before the filing of this application; the visit of the police to his business place and the invitation which followed; the restraint of his movement throughout the 4th day of November, 2025 when he honoured the invitation; and his arrest at the premises of the Oredo Customary Court on the 18th day of December, 2025 and his arraignment before the Magistrate Court the next day on a charge which, he says, has since been dismissed upon a no-case submission.

On the part of the Respondents, they maintained that the 1st Respondent lawfully reported allegations of stealing and conversion against the Applicant; that the 3rd to 5th Respondents invited him to respond to a petition alleging obtaining by false pretence, stealing and malicious damage; that on the 4th day of November, 2025 he volunteered a statement and was granted bail immediately without any formal detention; that he was arrested again, outside the court premises, only because he failed to report back on bail; and that he was charged to court the following day.

In an application for enforcement of fundamental rights, where the complaint is that the arrest and detention of the applicant arose from a civil transaction as in the instant case, it is the duty of the trial Court to determine whether or not the allegation resulting in the arrest and detention is criminal in nature and whether or not it was without probable cause. In other words, the trial Court is duty bound to determine whether the complainant had genuine belief in the guilt of the Applicant and that the proceedings he had initiated are justified. See the following cases on the point: *JIM-JAJA v. C.O.P. (2011) 2 NWLR (Pt. 1231) 375 at 390–391 paras H–B*; *BALOGUN*

v. AMUBIKANHUN (1989) 3 NWLR (Pt. 107) 18; and USMAN v. EFCC (2017) LPELR-43196(CA) (P. 18 PARAS C).

From the totality of the evidence disclosed by the parties, the following facts are not in dispute. The Applicant and the 1st and 2nd Respondents are on opposite sides in Suit No. ORACC/60R/2025 pending before the Area Customary Court, which concerns the burial of the late Chief Alexander Omoruyi Usuanlele and the related questions of his estate. The 1st Respondent, through his counsel, petitioned the office of the 3rd Respondent against the Applicant.

The 3rd to 5th Respondents invited the Applicant, and he honoured the invitation on the 4th day of November, 2025 and made a statement. The Applicant was arrested on the 18th day of December, 2025, and he was arraigned before the Magistrate Court on the 19th day of December, 2025.

None of the Respondents filed any valid process to controvert the averment in paragraph 18 of the Further Affidavit of the 13th day of July, 2026 that the charge has since been dismissed upon a no-case submission.

From the available evidence, the controversial facts in this application are as follows:

(a) Whether the Applicant was detained or had his movement restrained throughout the 4th day of November, 2025 (paragraph 24 of the supporting affidavit), or whether he made his statement and was granted bail immediately without any formal detention (paragraphs 10 and 11 of the 3rd to 5th Respondents' Counter-Affidavit and Exhibits AA2 and AA3);

(b) Whether the arrest of the 18th day of December, 2025 was effected in a "commando style" inside the premises of the Oredo Customary Court to intimidate the Applicant's family into withdrawing Suit No. ORACC/60R/2025 (paragraphs 7 and 10 of the Further Affidavit of 21/5/2026 and paragraphs 7, 9 and 12 of the Further Affidavit of 13/7/2026), or outside the court premises along Forestry Road after the Applicant failed to report back on bail (paragraph 32 of the 1st Respondent's Counter-Affidavit), the Applicant having deposed that he wrote through his solicitor to reschedule the date on account of his health (paragraph 12 of the Further Affidavit of 21/5/2026 and Exhibit D4);

(c) Whether the complaint of the 1st Respondent was criminal in nature and made in good faith, namely the removal of artworks, car keys and property documents from the house at No. 38, 2nd Ogbewase Street and the conversion of money given for the hospital bills and burial (paragraphs 22

to 27 and 31 of the 1st Respondent's Counter-Affidavit), or whether it merely relates to the estate of the deceased which is the subject matter of the customary court suit and was made to force the withdrawal of that suit (paragraphs 20 to 22 and 32 of the supporting affidavit; paragraphs 6, 9, 13 and 14 of the Further Affidavit of 21/5/2026); and

(d) Whether the arrest said to have taken place inside the court premises about three months before the filing of this application (paragraph 21 of the supporting affidavit) took place at all; it is not specifically answered by the 3rd to 5th Respondents beyond a general denial, and its date and duration are not given.

Upon a review of the evidence, I hold that even upon the showing of the Applicant, the complaint which the 1st Respondent made to the police was criminal in nature. The 1st Respondent complained that the house at No. 38, 2nd Ogbewase Street was raided and that several artworks, car keys and property documents were removed from it, and that money given to the Applicant for the hospital bills, the mortuary and the burial of the deceased was converted.

By Exhibit AA1, the petition alleged obtaining by false pretence, stealing and malicious damage. These are allegations of criminal offences known to law. The fact that the parties are also litigating over the burial and the estate of the deceased before the Area Customary Court does not convert an allegation of stealing into a civil dispute, nor does it confer on the Applicant any immunity from investigation. I am of the view that all the copious explanations being offered by the Applicant in his affidavit evidence, including that he lived with and cared for the deceased and has no reason to steal from him, are at best possible defences which he could raise before the police and at the trial of any charge against him.

It is pertinent to note that the same Constitution which guarantees the Applicant's fundamental rights also limited the enjoyment of those rights under certain circumstances as enshrined in *Section 35 of the 1999 Constitution as amended viz:*

"(1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law - (c) for the purpose of bringing him before a Court in execution of the order of a Court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence."

It does not lie in the mouth of the Applicant to determine which kind of criminal allegations the Respondents should intervene to investigate merely because he has some explanations to make. Indeed, all such explanations can only be made by the Applicant to the Respondents upon their intervention. I therefore, do not find anything untoward in the actions of the 3rd to 5th Respondents in acting upon the report of the 1st Respondent against the Applicant and following due process to invite and arrest him for the purposes of investigating the allegations made against him and hearing from him his own side of the story, and to take a further step to charge him to Court.

The Applicant has no immunity in law from being investigated for allegation of committing any criminal offence. His right to personal liberty was not breached or threatened or likely to be breached merely by reason of his invitation, arrest, investigation and arraignment before the Magistrate Court. See ***Section 35(1)(c) of the Constitution of Nigeria 1999 (as amended)***. See also ***Alhaji Aliyu N. Salihu v. Suleiman Umar Gana & Ors (2014) LPELR-203069(CA); and NWAFOR v. EFCC (2021) LPELR-52949(CA) (PP. 40–42 PARAS. B–B)***.

As to the events of the 4th day of November, 2025, the Applicant deposed in paragraph 24 of the supporting affidavit that his movement was restrained throughout the day and that he was dehumanised, without giving any particulars of the alleged dehumanisation. On the other hand, the 3rd to 5th Respondents deposed that he volunteered his statement and was immediately granted bail, and exhibited his statement and the bail bond as Exhibits AA2 and AA3. As rightly submitted by the learned counsel for the 1st and 2nd Respondents, relying on the decisions of the Court of Appeal in the cases of ***Universal Investment & Development & Anor v. Itoroh & Ors (2021) LPELR-54854(CA); Ihua-Madueyi v. Robinson (2019) LPELR-47252(CA); and Kalio & Anor v. Dawari & Ors (2018) LPELR-44628(CA)***, an invitation by the police to a citizen with the aim of ascertaining the veracity or otherwise of allegations levelled against him cannot, without more, constitute a breach or threat to his fundamental rights.

As to the arrest of the 18th day of December, 2025, whether it took place within or outside the court premises, the Applicant himself deposed that he was arraigned before the Magistrate Court on the following day, the 19th day of December, 2025. ***Section 35(4) of the Constitution*** requires a person arrested upon reasonable suspicion of having committed a criminal offence to be brought before a court of law within a reasonable time, and ***Section 35(5)*** defines a reasonable time, where there is a court of competent jurisdiction within a radius of forty kilometres, as a period of one day. The Applicant was brought before a court within that period. The subsequent dismissal of the charge upon a no-case submission does not, by itself,

render the earlier arrest unlawful. **Section 35(1)(c) of the Constitution** requires only reasonable suspicion, not proof of guilt, and the outcome of the trial is not the test of whether there was reasonable suspicion at the time of the arrest. See the unreported decision of the Supreme Court in ***Suit No:SC.CR/177/2020 Haruna Ibrahim v. The State (2025)***.

The powers of the Nigerian Police Force, with regards to crime prevention, detection and prosecution, are very wide. They are empowered to detain and question anyone reasonably suspected to have committed or to be connected with the commission of a crime. The wide nature of the powers of the police is encapsulated in **Section 4 of the Police Act 2020**, which charges the Police Force, among other duties, to prevent and detect crimes and protect the rights and freedom of every person in Nigeria, to maintain public safety, law and order, to protect the lives and property of all persons in Nigeria, and to enforce all laws and regulations without prejudice to the enabling Acts of other law enforcement agencies.

The only qualification is that the power must be exercised in accordance with the law. See the case of ***IGWEOKOLO v. AKPOYIBO & ORS (2017) LPELR-41882(CA) (P. 18 PARAS. D)***.

In the case of ***Fawehinmi v. I.G.P. (2002) 7 NWLR (Pt. 767) 606***, the Supreme Court held thus: ***"It is inconceivable that such wide powers and duties of the Police must be exercised and performed without any discretion left to responsible Police operatives. Unless a statute which confers powers or imposes duties expressly or by necessary implication excludes the exercise of discretion, or the duty demanded is such that leaves no room for discretion, it is my view that discretionary powers are implied whenever appropriate, exercised for salutary ends."***

The **Police Act** has not fixed or stipulated therein how the Police are to conduct their investigative powers. To that end, the Police carry out their investigation based on the strength or weight of information at their disposal. It is therefore the strength of the information at the disposal of the Police that should determine how they exercise their discretion to investigate or not to investigate. See the case of ***Olatinwo v. State (2013) 8 NWLR (Pt.1355) 126***.

Thus, so long as the Police properly exercise their discretion, a complaint under the ***Fundamental Rights (Enforcement Procedure) Rules*** for breach of the right to personal liberty may not be sustained. This is because, where a crime has been reported, it is within the discretionary powers of the Police under **Section 4 of the Police Act** to decide whether to investigate such crime and to also decide on the strategy or way they will conduct their investigation.

In the instant case, the 3rd to 5th Respondents acted on the complaint of the 1st Respondent against the Applicant. Their investigation led to the invitation of the Applicant, the taking of his statement and his release on bail, and eventually to his arrest and his arraignment before the Magistrate Court within the time prescribed by the Constitution. Whatever the outcome of that charge, the police did what the law expects of them when a crime is reported. It will be wrong for this Court to hold that the arrest, investigation and charge of the Applicant upon a complaint of stealing is tantamount to a breach of his fundamental rights.

It is thus my view that the 3rd to 5th Respondents having acted on the 1st Respondent's complaint, pursuant to Section 4 of the Police Act, the claim for breach of the Applicant's fundamental rights cannot be sustained. See the following decisions on the point: ***AKANBI & ORS v. C.O.P KWARA STATE & ORS (2018) LPELR-44049(CA)***; and ***MITIN v. C.O.P BAYELSA STATE & ORS (2017) LPELR-43064(CA)***.

Furthermore, in respect of the 1st and 2nd Respondents, it is settled law that every citizen has a right or even a duty to report to the Police anyone suspected of committing a crime and the Police have a corresponding duty to investigate the report in the course of their statutory function of prevention, detection of crimes and generally preservation of law and order. In the case of ***Fajemirokun v. Commercial Bank (Credit Lyonnais) Nigeria Limited (2009) 5 NWLR (Pt. 1135) 558***, the Supreme Court held thus:

"Generally, it is the duty of citizens of this country to report cases of commission of crime to the Police for their investigation and what happens after such report is entirely the responsibility of the Police. The citizens cannot be held culpable for doing their duty unless it is shown that it is done mala fide."

See also the cases of: ***ONAH v. OKENWA (2010) 7 NWLR (Pt. 1194) 512***; and ***MADUKA v. UBAH & ORS (2014) LPELR-23966(CA) (PP. 35–36 PARAS. B)***.

Upon a careful consideration of the circumstances culminating in the report made by the 1st Respondent against the Applicant, I think that he acted in good faith when he made the report to the police based on his belief that properties of his late father and money given for the burial had been taken and not accounted for by the Applicant. The pendency of the customary court suit over the burial and the estate does not, without more, show that the complaint was made mala fide. As for the 2nd Respondent, nothing specific is deposed against her beyond the general averment in paragraph 4 of the supporting affidavit that she instigated and financed the police.

In the event, the 1st and the 2nd Respondents are also not liable for the breach of the Applicant's fundamental rights.

On the whole, the sole issue for determination is resolved in favour of all the Respondents and this application is dismissed with N200,000.00 (Two Hundred Thousand Naira) costs in favour of all the Respondents.

Hon. Justice P.A. Akhiehiero
JUDGE
12/10/2026

COUNSEL:

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(WITH C.E. ESOMONU ESQ.
AND F.O. AIYEDUN ESQ.).....1ST AND 2ND RESPONDENTS
Y. MUSA ESQ.3RD TO 5TH RESPONDENTS